

THE 1508/1180
PRIVILEGES
OF AN
AMBASSADOUR:

Written by a CIVILIAN to a
FRIEND who desired his Opini-
on concerning the Portugall
AMBASSADOUR.

—*Et sanctum populis per secula nomen*
LEGATUM;—



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S I R,



Received your Letter concerning the *Portugalls* outrageous action in the *New Exchange*; and by that Empire you have over me, you may challenge my private opinion concerning it, how our *State* may justly vindicate the blood of our Natives, shed by the traine and followers of an *Embassadour*; Although the *Judges* having already acted by their imprisonment in the *Common-goal*, may seem to have decided the Controversie, by subjecting their persons to the *Common-Lawes*, not allowing them priviledges as *Comites Legati* ought to have. But I finde Sir *Edward Cook* himself censured, by a most learned *Civilian*, to be, *Foris quod cum exteris obtinet non aded peritus*; And therefore the present Judges may allow themselves not infallible in a point not deduced from *Littleton* or *Magna Charta*, (and so bounded within the *Narrow Seas*) but referring wholly to the *Lawes* and practice of Nations.

Sir *Edward Cook* in the *Jurisdiction of Courts* treatise. Cap. 26. treateth but incidently of *Embassadours*, as it were Confessing them exempt from the Jurisdiction of the *Common Law*. In the same Chapter he delivers it for Law, that if a man banished for any heinous offence be sent *Embassadour* to that place whence he was proscribed, he

ought not to be detained or punished : and the same Legantine office may in reason aswell protect him that offends *Durante officio*, as exempt that person from punishment, in that place where he is Employed *Legat*, after a Crime committed.

Ad Fletam.
dissert. cap. 8.
§ 4.

The most worthy *Selden* tells us, that *Renatus Choppinus* and other learned men are deceived, that rashly affirme, the English reteine no use of the *Casarian Lawes*; and declares that all Leagues and transactions between this Nation and other Princes and States, and the rights of *Legation*, are Governed and expounded by those Lawes, and the interpreters of them : and therefore the use of these Lawes is admitted in the Consistories of both our *Universities*, and in the Court of *Admiraltie*, that Forainers that come to study and merchandise may be regulated by those Lawes that are well known to themselves.

Kirckner. l. 2.
c. 1. n. 126.

The *Legate* brings with him the Lawes and rules of Nations; according to which he squares his proceedings; and his actions are onely examined by these, and not by the municipall Statutes of particular nations : the Interdict in some Citties in *Italy*, that no man shall under a great penaltie weare a sword in publique, cannot extend to a Legate (thither sent) who according to the custome of his nation, *Asinacem & telum gerit*.

Ferdinand the *Emperour* shut up a Grove neere to his palace in *Vienna* for his privacy and delight, and prohibited all persons under an heavy mulct to enter or cut down any trees there : the *King of Poland's Ambassador's* Coachman rudely entred the place, and carried away a Cartfull of the forbidden trees, and though the *Emperour* frowned hereat, yet *Legationis tutamini impune res illa cessit, quod aliis fraudi fuisset*.

An



An *Embassadour*, that Conspireth the destruction of that Prince to whom he is sent, cannot be accused of *Treason*, for *non subditus non potest peccare in maiestatem*; and though he be punishable, yet not by the municipall Lawes of that place where he offends, which usually punish *affectum pro effectu, suum & Consilium sceleris pro consummato*, but naturall reason, and the Law of nations, make a difference between Intentions, and Facts, *Gentilis de legat. lib. 2. Cap. 17.*

The *Venetian* Embassadour resident in *England* about the yeare 1628. was deprehended by the husband (if not *ἐπ' αὐτοφώρῳ* yet) in bed with his wife; the husband consulting the learned in the Laws for revenge upon the Embassadour, found, that (*inanis erat actio qua exceptione repellitur*) the Legate was Priviledged; and therefore was content only to sue a divorce *adulterium a mensa & thoro*: though adulterie be held *natura probrum ac turpe*, and (by the Law of the *Cod*) styled *fedissima nequitia. leg. 20. cad. ad leg. Jul de adult.*

Cicero saith, that the name of Embassadour ought to be so holy and inviolable, *quod non modò inter sociorum verrem. Fura, sed etiam hostium tela incolume versetur, idq; non tam humano quam divino scito sancitum*: They were as sacred as *Mercury* sent from *Jupiter*, and thereupon *Cato* Oraculously saith, *Caduceatori nemo nocet*: And therefore the *Romans* esteeming *Embassie* the only Umpire and preparative of Peace and Warre, and that *Legats* in their employments do put off the nature of Enemies, did set up a Colledge of twenty *Feciales* or *Heraulds*, that if any Embassadour was violated by a *Roman*, they might deliver up the offender without any respect had to the honour and dignity of his person: for to that Heroick nation, *Legati nomen gravius erat, quam ullius Injuria.*

Alber Gent.
H. Grotius,
&c.

Injuria aestimatio. The most eminent *Civilians* hold, that if an Embassadour offend (even through Treason or sedition) he is to be remitted to his owne Prince to be punished, or yeilded up by him, unless the danger from the Embassadour be imminent and sudden, in which case he may be justly killed, yet *non per modum pœnae, sed per modum naturalis defensionis*. And though Embassadours have sometimes been more roughly dealt with upon their committing offences, yet the *sacred priviledges of Embassadours* (as the Bishop of *Rosse* Embassadour for the *Queen of Scots* answered the Lord *Burleigh* (upon the same pretences against him) were never violated, *viâ Furis, sed viâ Facti*; and that by barbarous or ignominious persons.

Camd. Eliz.
anno 1571.

Liv.

The Embassadours of the *Tarquins* being sent into *Rome* to demand their goods, although they had conspired with some Roman Youths, and taken a resolution to let in the Kings clancularly by night: yet the *Consuls* (to whom this Treason was discovered by a slave, deprehending all the Conspiratours, & casting them into Prison) dismissed the *Legats* as inviolable by the lawes of Nations, whose very persons are *Asyla*, protecting both themselves, and others.

Scipio African, having taken a ship filled with many *Carthaginians*, remitted them all untouched, because they averred themselves to be *Legates*, although it was manifest to him, that they falsely assumed the name of Embassadors to avoid the present danger. And the learned *Gentilis* (though Advocate in *England* for the *Spaniard*) hath these words, *Iustissime actum his diebus in Angliâ cum legato Hispanico, qui in vitam Principis & regnum ejus conjuratus, dimissus est dimittendum Legatum*
exi-

De legat. 1.2.
c. 18.

explanatus optimis doctis rationibus, & exemplis. We read of *Sacra legationum, & Sanctimoniam legatorum.* Pomponius: l. si quis: ff: de legationibus: *Sancta corpora Legatorum: Varro lib. 3. de ling. lat. ab omni injuriâ rectis jure Gentium, Servius ad 10 Aeneid: tutiq; regressus legato. Papinius. lib. 2.*

I shall not deny but that some learned men do hold that the law of nations is reciprocal, and may be violated by the Legate as upon the Legate: and that tis one thing to violate the Embassadour, and another thing to punish him, this supposing a Crime, that an Injury, & hoc juris illud facti nomen est: and though a Legat is esteemed holy and inviolable by the lawes, yet *Marcianus* in his elegant definition of the word *Sanctum*, ff. l. 3. de rer: divis. delivers that to be so, *quod ab injuriâ hominum (non autem a jure magistratus) defensum atq; munitum est*, and therefore if an Embassadour, *Jure gentium sanctus habetur, Jure gentium etiam delinquens obligatur ad penam*: like as a sanctuary will save a mans life from man-slaughter; but not when man-slaughter is committed within the Sanctuary. *Frustra siquidem Ecclesia implorant auxilium qui in eam committunt.*

To this it may be replied, that by Remission of an offending Embassadour to his own Prince, the offence is not pardoned, but the tribunall changed; his *Mercurialis* rod doth not free but reprieve him: he may be interrogated, and his examinations transmitted to his Prince to punish him: And if an Embassadour ought to be remitted for offences against Princes and Common-wealths, which are Crimes, *contra Jus inter Gentes (quod Jus inter Principes & populos diversarum Gentium communiter intercedit)* how much more for offences against private persons that are *Crimina solum Jure Gen.*

Cap. in audientia. ex. de sent excom.

Gentium, such as are Homicide, Felony, and Lying, &c.

Now whether that security given to the Legates themselves may be extended to their followers, comes home to the *Portugalls Case*. It is a received rule, that *privilegium concessum persone singulari extenditur ad personas accessorias sine quibus privilegium exerceri non pot. st.* *Rebuffus de privilegiis, &c. privileg. 166. cap.*

Plut.

Argum. leg.

16 ff. de offic.

Prat. 12 q. 2.

cap. eccl. siar.

ff. ad leg.

Jul. de repub.

l. Julia lege.

De Jure Bel.

& pac. l. 2. c.

18. §. 8

Paus. lib. 7.

licet. de privileg. in 6. *Eis àvñs, & dñs àvñs.* And we see it granted at home and abroad to Embassadors, their followers being comprehended to use divine service after their owne Countrey Rites, and Religion: *eademq; Privilegia prudentum interpretatione derivantur & extenduntur ad Comites, cum aquisissimum sit oneris & periculi socios quinimo muneris vicarios, & moram testes, honoris quoq; & favoris esse participes.* And therefore they are equally guilty by the *Julian Law* who have injur'd either the Embassadors or their *Comites*. And the most excellent *Grotius* saith, *Comites sancti sunt accessorie*, and therefore if they doe transgresse, the Legat may be demanded to yeild them up, but they are not to be taken away by force, which being once done by the *Achaens* upon the *Lacedamonians* (who were in company with the *Roman Embassadors*) the *Romans* exclaim'd *The Lawes of Nations were broken.*

And if the Embassadors refuse to deliver up the offenders, satisfaction may be required of that Prince or State, that commission'd the Legat.

Leg. 2. Cod.

ubi crim.

Cod ubi sen.

leg. 1.

ff. l. g. eo fa

cto. de vulg.

Subl.

The meer Law of Nature exacts punishments in the place where the Crime is committed, and by the Civill Law, *quisque conveniendus est ubi delinquit, vel ubi reperitur*, it seeming to be reason that *reatus omnem honorem excluderet*, and that *immunitas desineret cum incipit esse damnosa*, Yet the Law of Nations exempts those that

that come upon publick Faith, by which Law many things are forbidden that are allowed by the Law of Nature. Also by the Canon Law *Clerico delinquenti datur praescriptio fori*, And the Civill Law speaks *De subditis*, who are to be tried where they have offended.

If Embassadors and their *Comites* should be onely secur'd from outrages and injustice (other men being so farre protected) they enjoy no speciall favour, or privilege. Besides, the security and remission of an Embassadour and his *Comites*, is of more concernment than their punishments, for punishments ought and may be had from that Prince and State, which sent the Embassadour. And if they refuse (*justè interpellati*) warre may be denounced in vindication. And therefore those Lawes which subject Strangers to the Lawes of those Territories where the Strangers are found, suffer an exception in the persons of Legats because they represent their Princes. The Civilities and Violations done to their Embassadors being esteem'd by Princes as done to themselves.

We finde him in the Civill Law to be guilty of Treason, *qui statuas aut imagines Imperatoris jam consecratas conflaverit, aliudve quid simile admiserit*: and Cujacius (like our owne Law) affirms him guilty of the penalty in the Law *Cornelia*: *qui monetam vultu Principis signatam conflaverit*. *Cassiodorus* brings in King *Theodorick* speaking, *Moneta debet integritas quari, ubi & vultus noster imprimitur; quodnam erit tutum, si in nostrâ peccetur effigie*, &c. And *Philip* did therefore overthrow *Athens*, because the *Athenians* had but bespattered his Image with *Urine*. And if the Abusers of the Statues and Pictures of Princes, have been so severely handled, how may they be dealt with, that shall violate the vo-

ff. leg. 6ta. ad leg. Jul. Majest.
19. *Obs.*

7. *Variar.*

Dio. Ap. in Mithr.

call and animate Images of Princes (*prope dixerim
animum & Linguam*) the Legates themselves.

Camd. Eliz. *Idiaco* Secretary to *Philip* the second, King of *Spaine*, told *Waad* the Embassadour of Queen *Elizabeth*, that the affronts and injuries the Queene had done to *Mendoza* (anno 1584) as formerly to *Despesi*, the *Spaniards* Embassadours (anno 1569.) were offered to the *Catholick King* himselve.

Lib. 2. cap. 3. An Embassadour therefore representing his Prince, enjoys the same priviledge his Prince should do, were he in another Nation. And there is a notable President cited out of *Fleta*, that Kings carry an exempt Jurisdiction being in another Nation, where treating of the Jurisdiction of the Court of *Marshalsey*, it is said, And these things they may lawfully doe by Office, (that is to say) the Steward of the Kings household, notwithstanding the liberty of any other, although in another Kingdome, where the offendour may be found in the Kings house; according to that which happened at *Paris*, held in the 14. year of *Edw. 1.* of one *Ingelram* of *Nogent*, taken in the household of the King of *England*, (the King himselve being then at *Paris*) with silver dishes lately stoln, at which deed the King of *France* being present; and whereupon the Court of the King of *France* did claim Cognizance of the Plea concerning that Theft, by Jurisdiction of the Court at *Paris*, the matter being diversly debated in the Councell of the King of *France*; at length it was ordered that the King of *England* should use and enjoy that his Kingly Prerogative of his household; where being convicted (by Sir *Robert Fitz-John* Knight, Steward of the Kings household) of the Theft, by consideration of the same Court he was hanged on the Gallows in *St. German's fields*.
It

It may be objected that by this Remission of the offenders to their own Masters, the like attempts may be encouraged, the Train and followers of Embassadors being not stinted by the Lawes of Nations, and then, not *legatio sed Legio mittatur*, whereupon *Georgius Romanus*, Governour of the Citie *Dara* under *Justinian* the Emperour, refused to admit the Embassadors of *Cosrhois* the *Persian King* into the City, being foure hundred Persons, lest they might prevaile upon the City. Proc. lib. 2.

It is replyed, No man can justly object his feare of the multitude of Embassadors; for my right is not taken away by another mans feare, and so much the lesse, because there be many wayes of Caution and prevention of danger.

It is true, that Embassies of Congratulation carry more pomp usually than businesse, and the Attendants are many; In these Embassies of businesse, fewer, because transactions are more expeditious (and more secret) that are managed by few; And therefore that little beast the Naturalist calls *Millepeda*, *omnium reptilium tardissimum est animalculum*: And though *Demetrius* taking it heynously from the *Lacedamonians* that had sent onely one person in Embassie to him, *sic exclamasse fertur, unum ad me Lacedamonij?* to whom the Legate replyed *scitè & breviter, sed non ad Legationis pompam ac decorem*, *ἔς πρὸς ἑνᾶ*, And *Isidor. lib. 4.* speakes of *Belus rex Babylonia* (who first introduced Commerce by Embassadors) that he was content with two: Like old *Cato* that had one or two Boyes onely in his company when he was Embassador. Yet our moderne Lawyers commend sometimes the splendor of an Embassage, & our Stories express them most Plutarch.
successfull

successful in their Treaties, that are most honourable in their carriage, and Copious in their traines. And *Kirchnerus* observes the *French* to be reputed ignominious by the parsimony of their Legations.

But heretofore (as well as at present) the *Portugalls* in their Embassies, as *Warser. de Legat.* speaks, *Lusitani Regis in Hispaniam legationem instar exercitus appulisse*, and the master of the Household appointed to quarter them, demanding how many they were, being answered by a *Portugall*, that *they were 500 like unto Gods, and 500 like unto other men in that Embassage*, replied that *the God-like should go into the Temples, and these like men into the Inns.*

In this delivery of my Judgement, I have not endeavoured to flatter my Countrey-men into the usurpation of an illegall priviledge, but rather advertis'd them to amplify their renown by a generous observation of Hospitality, and respect to strangers and Embassadors: and have impartially searched after truth, because though there is no man before whom I might more safely erre, yet there is none whom I would more unwillingly seduce than my Second selfe.



FINIS.

